

and not retrenched? Even assuming that the court was right in holding that the termination of service is discharge, what is the legal basis for the compensation so awarded? There is nothing in the legislation nor in the Collective Agreements. I do not consider that sections 28, 29 and 30 of the Industrial Relations Act are wide enough to authorise the court to create legal rights and duties between the parties to the dispute or the party added subsequently. Hence I agree with counsel for the Hotel that compensation awarded is illegal. It seems that the workers raised the dispute because they thought that they ought to be compensated for loss of employment, but this "ought" is not a matter which is provided for by the law or by the Collective Agreement, and I do not think that the Industrial Court can supply the gap short of legislation. That being the case, however much I am in sympathy with this workmen for the loss of employment, in my view, there is clear error of law on the face of record. I therefore allow this application and quash the award accordingly. I also order that the cost of proceedings before me be paid by the 1st respondent.

Order accordingly.

Solicitors: V.K. Palasuntharam; D.P. Xavier & Co.; S.M. Ratnam.

**NANTHAKUMARAN v.
JAFFNESE CO-OPERATIVE HOUSING
SOCIETY LTD. & ORS.**

[O.C.J. (Mohamed Azmi J.) March 21, 1979]
[Kuala Lumpur — Civil Suit No. 1423 of 1978]

Practice and Procedure — Application for injunction against Registrar of Titles, Kuala Lumpur — Notice in lieu of service — Unsealed copy of notice — Irregularity curable — No injunction can be granted against Government officer — No interim declaratory order can be made — R.S.C. 1957, O.1A r.3 and O.70 — Specific Relief Act, 1950, s. 54(d) — Government Proceedings Ordinance, 1956, s. 29(1).

Administrative Law — Application for injunction against Registrar of Titles, Kuala Lumpur — No injunction can be granted against Government officer — No interim declaratory order can be made — Specific Relief Act, 1950, s. 54(d) — Government Proceedings Ordinance, 1956, s. 29(1).

Land Law — Order against Registrar of Titles — Can only be made after judgment — National Land Code, s. 417(1).

In this case the dispute related to the allocation of a housing lot to the plaintiff. The plaintiff alleged that he was given land on a slope and of a smaller size than that given to the second and third defendants by the first defendant. He applied for re-adjustment of the lots or for levelling of the land. He applied by notice of motion for an order that the fourth defendant, the Registrar of Titles, Kuala Lumpur, do cease and desist from issuing separate titles for the lots pending the final disposal of the suit. The fourth defendant raised preliminary objections on points of law.

Held: (1) although an unsealed copy only of the notice in lieu of service was served on the fourth defendant, the defect was an irregularity which could be cured by order 70 of the Rules of the Supreme Court;

(2) the court could not grant an injunction against the fourth defendant who is a Government officer. The court could only grant a declaratory order but even if the notice of motion was amended no interim declaratory order could be made;

(3) an order under section 417(2) of the National Land Code can only be made after judgment has been given by the court.

CIVIL SUIT.

A. Kanesalingam for the plaintiff.

S.D.K. Peddie for the 1st defendant.

C. Thambiah for the 2nd defendant.

P.S. Moorthy for the 3rd defendant.

Fong Seng Yee (Federal Counsel) for the 4th defendant.

Cur. Adv. Vult.

C Mohamed Azmi J.: This is an application by notice of motion dated May 8, 1978 by the plaintiff for an order that the fourth defendant do cease and desist from taking any further steps in connection with the issuance of separate titles whether they be qualified titles or final titles for Lots 9902, 9903 and 9904 pursuant to sub-division of the main title Geran No. 19476 for Lot 9769 Mukim of Petaling, pending the final disposal of the suit.

From the pleadings and affidavit of the plaintiff sworn on May 8, 1978, the plaintiff is a member of the first defendant Co-operative Housing Society. The dispute in this suit is regarding allocation of housing lot to the plaintiff. The statement of claim alleges that the land allotted to the plaintiff is on a slope, whereas the second and third defendants who are also members of the Co-operative Society are given lots which are flat lands. It is also alleged that the land allotted to the plaintiff (Lot 9902) only has an area of 39,595 square feet; whereas the piece allotted to the second defendant (Lot 9903) has an area of 52,305 square feet, and the piece to the third defendant (Lot 9904) enjoys an area of 51,921 square feet. Accordingly, the plaintiff claims, *inter alia*, for an order that the boundary of Lot 9902 allotted to him be set back 40.13 links towards the second defendant's Lot 9903, and that the other boundary of Lot 9903 be moved 20 links into the third defendant's Lot 9904, so that the three pieces of land would have more or less the same size. Alternatively, the plaintiff prays for an order that the Co-operative Society do forthwith level the plaintiff's land by filling up all the slope and construct a retaining wall to support the fill-up area.

It should be observed at the outset that the fourth defendant is not really a party in the dispute between the plaintiff and the other three defendants. Be that as it may, in the present application, the plaintiff in reality is seeking for an interim injunction to "cease and desist" the fourth defendant from issuing separate titles in respect of the three lots of land which form the subject-matter of the plaintiff's claim. By paragraph 21 of the plaintiff's affidavit, it is averred that, if the separate titles for Lots 9902, 9903 and 9904 are issued by the fourth defendant, the plaintiff will not be able to avail himself of the remedy that the boundary lines of the three lots should be shifted. By paragraph 22 of the affidavit, the plaintiff prays for the injunction order to restrain the fourth defendant from issuing the separate titles under section 417 of the National Land Code.

Counsel for the fourth defendant raises two preliminary objections on point of law. Each of the counsel for the other three defendants also opposes the application. The first preliminary objection is that, since the fourth defendant is a Government servant, by implication, the Government of Malaysia is being sued. As such, under Order 1A rule 3 of the Rules of the Supreme Court, notice in lieu of service should be served on the fourth defendant. The fourth defendant has, however, been served only with an unsealed copy of the notice. Counsel for the plaintiff concedes that an unsealed copy of the notice was served on the Attorney-General. Since the Attorney-General has accepted service without objection and in view of the undertaking of counsel for the plaintiff to serve him with a sealed copy, I do not think the plaintiff's application should be dismissed merely on this ground. At the most, the defect is an irregularity which can be cured by Order 70 of the Rules of the Supreme Court.

On the second preliminary objection, it is submitted that since the notice of motion is in the nature of an application for an injunction, by virtue of the proviso to section 29(1) of the Government Proceedings Ordinance, 1956, the court can only make a declaratory order but it cannot grant an injunction against the fourth defendant who is a Government officer. In my judgment, the second preliminary objection is well taken. Section 29(1)(a) provides:

"In any civil proceedings by or against the Government the court shall, subject to the provisions of this Ordinance, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require: Provided that (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties."

By virtue of section 2(3), the above provision shall be construed as including a reference to civil proceedings to which any officer of a Government is a party.

From proviso (a) to section 29(1), it is clear that the court cannot grant the order as prayed in the notice of motion. Further, under section 54(d) of the Specific Relief Act, 1950 (Act 137), it is provided that:

"An injunction cannot be granted to interfere with the public duties of any department of any Government in Malaysia, or with the sovereign acts of a foreign Government."

Counsel for the plaintiff in fact concedes that the court can only grant a declaratory order against the fourth defendant. As such, the notice of motion as it stands must fail. In my judgment, such declaratory order must be confined to the rights of the parties, and, even if the notice of motion is amended at this stage, no interim declaratory order can be made.

In conclusion, it is submitted by counsel for the plaintiff that the present application is made pursuant to section 417 of the National Land Code. Subsection (1) of that section states:

"The court or a judge may by order direct the Registrar or any collector to do all such things as may be necessary to give effect to any judgment or order given or made in any

A proceedings relating to land, and it shall be the duty of the registrar or collector to comply with the order forthwith."

In my view, the purported application under section 417 of the National Land Code is misconceived and premature. An order under that section can only be made after a judgment has been given by the court. Generally, that section is invoked to obtain consequential reliefs for the purpose of giving effect to any judgment or order concerning land or interests in land even if the Collector or the Registrar of Titles is not made a party to the civil proceedings.

For the above reasons, the second preliminary objection is upheld. The plaintiff's notice of motion is accordingly dismissed with costs.

Order accordingly.

Solicitors: A. Kanesalingam & Co.; Skrine & Co.;
Chellappah Thambiah; P.S. Moorthy.

D RE LEE MAH REALTY SDN. BHD.; SONG KUENG POH v. LIEW CHOCK SANG & ORS.

[O.C.J. (Harun J.) April 18 and 25, 1979]

[Kuala Lumpur — Origination Petition No. 8 of 1979]

E *Company Law — Application under section 181 — Whether by Originating Petition or by Originating Motion — Companies Act, 1965, s. 181.*

Practice and Procedure — Procedure of application under Companies Act, 1965 — R.S.C., 1957, O. 53B.

In this application under section 181 of the Companies Act, 1965 on a preliminary objection it was contended that the proceedings should not have been commenced by Originating Petition but Originating Motion.

F **Held:** (1) section 181 of the Companies Act, 1965 dealt with remedies in cases of oppression of shareholders by the directors of a company. By its very nature, it is contentious and such an application seeking remedies should set out the acts of oppression complained of. This could be achieved if the Originating Petition procedure was used;

G (2) the correct procedure to commence an application under section 181 was by petition and accordingly the proceedings herein were properly commenced.

Cases referred to:-

- (1) *Re Coliseum Stand Car Service Ltd.* [1972] 1 M.L.J. 109.
- (2) *Re Kong Thai Sawmill (Miri) Sdn. Bhd.* [1978] 2 M.L.J. 227.
- (3) *Re Meister Lucius & Bruning Ltd.* [1914] W.N. 390.
- (4) *Re United Iron Mining Co. Ltd.* [1970] 1 M.L.J. 105.
- (5) *Tan Chwee Geok & Anor. v. Khaw Yen-Yen & Anor.* [1975] 2 M.L.J. 188.

H ORIGINATING PETITION.

P. Cumaraswamy (Miss S. Sharma with him) for the petitioner.

I *S.D.K. Peddie for the respondents.*

Cur. Adv. Vult.

Harun J.: This is an application under section 181 of the Companies Act, 1965. On a preliminary objection, it is contended that these proceedings should not have been commenced by Originating Petition but by Originating Motion. The authorities cited for this